Comment on Recent Cases

Accord and Satisfaction—Acceptance of Check Corresponding in Amount with Accompanying Statement.—In Meyer v. Cowell Lime and Cement Company,[1] defendants, who were indebted to plaintiffs, sent to plaintiffs a statement which, they claimed, set out the full amount of their indebtedness, and enclosed a check for the amount named. Plaintiffs cashed the check, but at once notified the defendants that a balance was due upon the account. On these facts it was held that the question of whether or not the transaction constituted an accord and satisfaction, as claimed by the defendants, was one for the jury. In the course of the discussion the court approved the rule that, in the case of a claim which is unliquidated, or which is the subject of a bona fide dispute, if a check tendered is stated to be given in full payment of the debt, and the tender is accompanied by such acts or declarations as amount to a condition that if the check is accepted at all it is accepted in full satisfaction of the disputed claim, **and the creditor so understands,** its acceptance by the creditor constitutes an accord and satisfaction. This rule has never before been specifically approved in California, but is supported by the great weight of authority in other jurisdictions, and was suggested as the proper rule to be adopted in this state in the March number of the California Law Review.[2] Its validity has been questioned, however, by Professor Williston, on the ground that "if as soon as the check is taken notice is promptly given to the debtor that it is not taken as satisfaction, it seems impossible to find the elements of a bargain."[3] But, adopting this view, it must follow that the cashing of the check by the creditor amounts to a conversion, and, as Professor Williston himself points out, it may be forcibly argued that "the creditor should not be allowed to assert his tortious conversion, though the effect of such a ruling is to fix upon the creditor a bargain which he never made."[4] J. U. C., Jr.

Agency: Notice to Agent as Notice to Principal.—As a rule of agency it is undoubtedly well settled that notice to the agent acting within the course of his employment and scope of his authority is notice to his principal. This rule is based either upon the legal identity of principal and agent or upon the presumption that the agent

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[1] (April 4, 1913) 16 Cal. App. Dec. 643.
[2] 1 California Law Review 257, 258.
[3] Williston's Wald's Pollock on Contracts, 3rd Edition, p. 840.
[4] Idem; and see 1 California Law Review 258.

has disclosed the notice to his principal, in accordance with his duty.[1] When, however, the interest of the agent in a given transaction is adverse to that of his principal the presumption does not operate, and notice to the agent is not notice to the principal.[2] Take, for instance, the case of a corporation represented entirely or almost entirely by an agent in a certain transaction in which the agent has an individual interest adverse to that of his principal

It has been recently decided by the Supreme Court of California, in the case of McKenney vs. Ellsworth, that under such circumstances notice to the agent is notice to the principal.[3] In this case a note was payable individually to the president of a banking corporation. The payee, with knowledge of an offset against the note, indorsed it to the bank, while he was in full charge as president and manager. The bank brought an action against the maker, who relied upon the setoff, and the Court held that the corporation bank took with notice of the defendant's rights. Speaking of the agent the Court said, "It is his duty, notwithstanding his interest, to communicate to his company (principal) any facts in his possession material to the transaction, and the law will therefore presume, in favor of third persons, that he made such communication."[4]

There is a decided conflict in the authorities on this point as is evidenced by the following language from a Federal case:[5] "It is true that some authorities seem to suggest a distinction between the knowledge of a director who, though personally interested, also represents the corporation, and the knowledge of a director who only acts for himself, the corporation being represented by other directors or agents. This distinction, however, I think is not well founded. The reason * * * * ..why the knowledge of a corporate director, relating to a transaction with the corporation in which he is personally concerned, and acts for himself, will not be imputed to the corporation, is that his adversary interests are such that he will not be likely to communicate to the corporation a fact which he is thus interested in concealing. The reason applies as strongly when the interested director acts for the corporation as when he does not so act, and therefore the cases are indistinguishable."

The strongest cases of adverse interests between principal and agent are the cases of fraud and conspiracy on the part of the agent. Viewing the situation from the side of the corporation alone, it should

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[1] Mechem, Agency, Secs. 718, 719.

[2] Mechem, Agency, Secs. 723; 31 Cyc. 1595 and cases cited.

[3] (April 22, 1913) 45 Cal. Dec. 528.

[4] Bank of Pittsburg v. Whitehead, (1870) 10 Watts (Pa.) 397, 36 Am. Dec. 186, note. Le Duc v. Moore (1892) 111 N. C. 516, 15 S. E. 888.

[5] Whittle v. Vanderbilt Mining Co., (1897) 83 Federal 48. See also Findley v. Cowles, (1895) 93 Iowa, 389, 61 N. W. 998, 1000. Hummel v. Bank of Monroe, (1888) 75 Iowa 689, 37 N. W. 954. Camden Safe Deposit Co. v. Lord, (1904) 67 N. J. Eq. 489, 58 Atl. 607.

not suffer as against the fraudulent agent. Viewing the matter from the standpoint of the third party, however, it seems fairer to put the burden on the corporation since it appointed the agent whose dual capacity caused the injury.

In some cases this problem presents a question of finding the real parties to the transaction rather than a question of agency. This is especially true in the so called "one man" corporations where the person acting as agent either owns practically all the stock or has complete control and full management of the corporation in all of its dealings. In such cases the agent is the principal and the knowledge of one is the knowledge of both.

M. C. L.

Appeal and Error: Order Denying New Trial.—The decision of the Supreme Court of California in Frost v. Los Angeles Railway Co.,[1] has, let us hope, effectually prevented another knot being tied in the already tangled skein of procedure. In that case, the trial court, after a verdict for the defendant, made, upon the plaintiff's motion, an order for a new trial, in general terms. It is well settled that the appellate courts will sustain such an order upon any ground upon which it might have been granted, irrespective of the views of the trial court in granting the new trial. Nay, even if the trial court declares in the order granting the motion that it rested its decision upon certain points and those alone, the power of the appellate court to examine the entire law will not be abridged.[2] The only case in which the reasons of the lower Court become material is where the order granting the new trial expressly and in direct language negatives the ground of insufficiency of the evidence to sustain the verdict as one upon which the trial court acted.[3] This last exception is founded upon the difference in principles upon which trial courts and appellate courts proceed with respect to the evidence. The Supreme Court, as was recently pointed out by Mr. Justice Henshaw "sits to review errors of law. It is powerless under its organization to make findings of fact. That power is vested exclusively in the trial court and every litigant has the right to insist that the verdict of the jury or the finding of the trial court shall be absolutely controlling, without interference or attempted interference by this court."[4] On the other hand, trial courts, even when reviewing

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[1] 45 Cal. Dec. 560 (May 6, 1913).

[2] Gordon v. Roberts, (1912) 162 Cal. 506, 508, 123 Pac. 288, 289; Shea Bocqueraz Co. v. Hartman, (Dec., 1912) 129 Pac. 807 (Cal. App.) A different rule obtains in Washington: Moore v. Marsh, (1910) 59 Wash. 151, 109 Pac. 606.

[3] Kauffman v. Maier, (1892) 94 Cal. 269, 277, 29 Pac. 481, 482.

[4] Estate of Moore, (1912) 162 Cal. 324, 326, 122 Pac. 844, 845. See also the language of Mr. Justice Lorigan in Thom v. Stewart, (1912) 162 Cal. 413, 420-421, 122 Pac. 1069, 1072.